No. 99-582

In The
Supreme Court of the United States

DEXTER WAYNE BETTS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the trial court's drug type finding under 21 U.S.C. § 841 and U.S.S.G. § 2D1.1, affirmed by the Seventh Circuit, that the substance at issue constituted "crack" cocaine, versus some other form of "cocaine base," was clearly erroneous where there is absolutely no uniformly accepted or even accepted federal statutory or case law standard for what constitutes crack cocaine, and where the standard applied by the trial court and Seventh Circuit was whether a member of law enforcement believed the substances at issue had observable similarities in physical characteristics to crack cocaine that he had observed on other occasions.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINION BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF FACTS 3

REASONS FOR GRANTING THE PETITION 7

CONCLUSION 8

APPENDIX

Seventh Circuit Opinion ..... App. 1

District Court's Judgment and Commitment ..... App. 14

District Court's Ruling from Bench regarding crack cocaine finding ..... App. 24

TABLE OF AUTHORITIES

Page

STATUTES

Title 21 U.S.C. § 846 3

Title 21 U.S.C. § 841(a)(1) 1, 3

U.S.S.G. § 2D1.1(c), Note D 3, 7

OPINION BELOW

The Seventh Circuit Court of Appeals opinion is published at 576 F.3d 738. The District Court did not publish an opinion in this case. Its pertinent rulings from the bench are reprinted in the Appendix.

JURISDICTION

The Seventh Circuit filed its decision on August 12, 2009. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the Circuit Court's decision on a writ of certiorari.

STATUTORY PROVISIONS INVOLVED

21 U.S.C. § 841(b)(1)(A)(iii)

(b) Penalties

Except as otherwise provided in §§ 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving –

* * *

(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

* * *

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such persons shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of §§ 849, 859, 860, or 861 of this title after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. Notwithstanding § 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of

supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

U.S.S.G. § 2D1.1(c)

Note (D) "Cocaine base," for the purposes of this guideline, means "crack." "Crack" is the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form.

STATEMENT OF FACTS

On October 25, 2006, the Government returned an Indictment against Appellant and his co-defendants. The Government charged Appellant only in Count One (Conspiracy in violation of Title 21, U.S.C. § 846), and in Count Twelve (knowingly and intentionally distributing cocaine base, purportedly in the form of crack cocaine in violation of Title 21, U.S.C. § 841(a)(1)).

On November 1, 2006, Appellant entered a plea of not guilty. On October 17, 2007, Appellant orally moved the District Court for leave to file a Brief regarding the nature of the drug type at issue, i.e.,

whether it constituted merely "cocaine base" or "crack." The District Court granted that Motion. Accordingly, on October 22, 2007, Appellant filed his Brief in Support of his Motion for Pre-Plea Evidentiary Hearing on Drug Type. In short, pursuant to that Brief and Motion, Appellant sought a determination by the District Court – *prior* to the entry of a plea by him – of whether the substance at issue would be considered merely cocaine base or whether it constituted crack. The District Court denied that Motion, holding that Appellant was not entitled to such a determination prior to deciding whether to enter a plea of guilty. The District Court held that such a determination was a sentencing issue only.

Thus, after having exhausted that issue, Appellant ultimately agreed to change his plea, and entered a plea of guilty on January 17, 2008. Appellant pled guilty only to Count Twelve, pursuant to a blind plea.

However, the issue of the nature of the substance at issue continued to permeate the proceedings before the District Court. The two-day sentencing hearing was devoted almost exclusively to the issue of what was the nature of the substance at issue, i.e., was it merely cocaine base or should it be considered crack cocaine. The resolution of that issue was crucial to the District Court's sentencing determination with respect to Appellant. If the substance were found to be crack, the ten-year mandatory minimum applied. Conversely, if the substance were found to be merely

cocaine base and not crack, the ten-year mandatory minimum would not apply.

At the sentencing hearing and in an attempt to meet its burden of proof that the substance at issue constituted crack, the Government offered the testimony of, *inter alia*, a Chicago police officer. That officer testified that, in that capacity, he purchased drugs, including crack, on various occasions; he had participated in search warrants and drug seizures, including those involving crack cocaine; he was familiar with how crack smells and feels; and that the substances at issue were consistent with his prior experience with crack, and were in fact crack.

However, during his cross-examination testimony, the officer expressly admitted that the way drugs are processed is how one actually determines if a substance is crack, as opposed to merely cocaine or cocaine base; that he had no idea who processed the substances at issue that he received from Appellant and his co-defendant; that he had no idea how the drugs at issue were processed; and that he had no idea how the substances at issue became hard and rocky. In fact, the officer ultimately testified that, to make crack, one must first have cocaine and then cook it with chemicals; however, the officer admitted that he had no idea what chemicals would yield crack.

At the sentencing hearing, Appellant called as an expert witness a forensic scientist holding an advanced bachelor's of science degree in chemistry

and a master's degree in physical chemistry, who had performed tens of thousands of analyses with respect to cocaine-related or derivative substances. Based upon his extensive knowledge and experience, and the relevant literature that is generally relied upon by experts in his field, that expert testified to his knowledge and familiarity with the manner with which the substance commonly known as crack is processed and prepared. Based upon the manner in which the substances at issue were processed, the expert concluded and opined that the substance that the Appellant and his co-defendant had prepared was not crack but was something else. In conclusion, the expert testified that Appellant and his co-defendant had created a non-salt form of cocaine that was cocaine base but not crack.

The District Court ruled that the substances at issue were cocaine base. The District Court held:

> On the question and on the objection by the defendant as to whether or not the substance was crack cocaine or some other form of cocaine bases, the objection is overruled. We heard a lot about the process by which powder cocaine was submitted. There is no dispute that on the other side of the process it yielded cocaine base, so I'm at a loss to understand why we went through this exercise. Crack is a physical form of cocaine base that's smokable. There is no – there is nothing in that evidence that was submitted that would suggest that it is anything other than what the undercover agents testified

> that it was. He testified by sight, smell, and feel that it appeared to be crack. That is sufficient. So the objection is overruled.

Based upon that finding, the District Court accordingly held that the ten-year mandatory minimum applied. The District Court sentenced Appellant to a term of 140 months of incarceration.

The Seventh Circuit affirmed that holding on appeal, essentially finding that the officer's observations about what he believed typically constitutes crack cocaine was sufficient to support a finding of crack cocaine.

REASON FOR GRANTING THE PETITION

Incredibly, although the question of whether an illicit substance constitutes crack cocaine or merely some other form of cocaine base is at the heart of tens of thousands of federal prosecutions annually across the country, and forms the basis for the imposition of a mandatory minimum sentence, there is no or uniform or even agreed upon standard set forth in any federal statute, in any Circuit case law, or in the United States Sentencing Guidelines, for what actually constitutes crack. (*See* U.S.S.G. § 2D1.1(c), Note D) Thus, Congress has left it to the Circuits to decide on a case-by-case basis what constitutes crack in a given case. A federal criminal defendant is not on notice, and cannot be, based upon the federal statutes and Circuit case law, as to what constitutes crack and

what constitutes something short of, or different than crack, in the form of cocaine base.

In any event, it cannot be said, as found by the trial court and Seventh Circuit in this case, that if a substance looks, smells, and feels like crack, that it is crack – where there is no definition of standard of crack in the first instance. Accordingly, this Court should grant Appellant's petition to not only resolve the case-by-case determination of the nature of crack versus cocaine base, but also to set a standard that all of the district courts and Circuits can apply for all purposes, ranging from change of plea hearings, to sentencings, and to the question of when a mandatory minimum sentence is appropriately triggered based upon the nature of the substance at issue.

CONCLUSION

The Court should grant the petition for writ of certiorari and reverse the decision of the Seventh Circuit.

Respectfully submitted,

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In the
United States Court of Appeals
For the Seventh Circuit

No. 08-3555

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

DEXTER WAYNE BETTS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 06 CR 699-3 – **David H. Coar**, *Judge*.

ARGUED MAY 28, 2009 – DECIDED AUGUST 12, 2009

Before EVANS, WILLIAMS, and TINDER, *Circuit Judges*.

WILLIAMS, *Circuit Judge*. Dexter Betts pleaded guilty to distributing more than fifty grams of cocaine base. Increased penalties apply to the distribution of crack, but not to other forms of cocaine base. Betts objected to the government's characterization of the substance as crack, but after a two-day sentencing hearing, the district court found that the substance was crack and sentenced Betts to 140 months' imprisonment. Betts contends that the evidence presented was insufficient to establish that the substance

was crack and relies on ambiguous comments that the judge made in the course of sentencing to argue that the court's finding was flawed. But a reading of the record as a whole shows that the court permissibly relied on the testimony of an experienced investigating officer and did not err in finding that the substance Betts sold was crack. So we affirm the judgment of the district court.

I. BACKGROUND

In June 2006 the Chicago Police Department began investigating reports of an open air drug market on the south side of Chicago. On September 9, 2006, Sergeant Ronald Kimble, operating undercover, arranged to purchase half a kilogram of crack from Betts's codefendant, Timothy Person. Both Betts and Person arrived at the agreed sale location, where Betts supplied Person with two plastic bags, each containing large chunks of a white, rocky substance. Person then sold the bags to Sergeant Kimble, who paid him $11,000 in pre-recorded bills. Person gave a portion of the money to Betts. After the exchange, Sergeant Kimble asked Betts how much he would charge for a whole kilogram of crack, to which Betts responded $16,000. Officers arrested Betts a few blocks away and found $7,200 in pre-recorded bills in his possession.

Betts was initially charged in a criminal complaint with conspiring to distribute in excess of fifty grams of crack. *See* 21 U.S.C. §§ 841(a)(1); 846. In

October 2006 a grand jury returned a multi-count superseding indictment, which charged Betts with conspiring with five other codefendants to distribute crack and with distributing in excess of fifty grams of crack. Betts pleaded guilty to the distribution charge, admitting that he sold a substance containing cocaine base but stating that, for sentencing purposes, he disputed the allegation that the substance was crack. The government later dismissed the conspiracy charge without prejudice.

At sentencing the government presented two witnesses in support of its contention that the substance was crack. A forensic chemist with the Drug Enforcement Administration ("DEA"), Nicole Wenzel, testified that she analyzed the chemical composition of the substances contained in the two plastic bags. The first bag contained a paste-like substance, and the other contained a wet, off-white, rock-like substance. Wenzel's testing showed that the substance in the first bag was cocaine base and procaine, a local anesthetic that is used as an adulterant because it has physiological effects similar to cocaine. The substance in the second bag was made up of cocaine base, cocaine, and sodium bicarbonate. Asked to explain the difference between cocaine hydrochloride (powder cocaine) and cocaine base, Wenzel testified that cocaine hydrochloride has chloride salts attached to the cocaine molecule, while cocaine base has no salt attached. In her testing, Wenzel sought only to determine the presence of cocaine base and did not conclude whether either substance was crack.

Sergeant Kimble, an eighteen-year veteran of the Chicago Police Department with eight years as an undercover officer specializing in the investigation of narcotics trafficking, testified that he had purchased crack in an undercover capacity more than one hundred times and is familiar with the look, smell, and feel of crack. Sergeant Kimble testified that he called Person, asking for a half-kilo of crack, and in response, Betts and Person sold him two large chunks of a white, rocky substance. Based on his years of experience in narcotics, and by seeing, feeling, and smelling the substance, Sergeant Kimble concluded that it was crack.

To counter this evidence, the defense called an expert witness, Wayne Morris, a forensic scientist who had worked in law enforcement chemically analyzing thousands of drug samples. Morris testified that he was familiar with the traditional method of creating crack, and based on the procedure Betts described to him in an earlier interview, Morris concluded that the substance Betts created was not crack, but a non-crack form of cocaine base. Morris based this conclusion on Betts's statements that he used only a small amount of water and did not filter the substance, and that he had used the procaine and sodium bicarbonate to simply "blow up" or bulk up the product to "rip off" his customers.

Betts also testified, explaining that he and another codefendant, Antwan Ramsey, created the substance by taking a small amount of powder cocaine and adding an equal amount of procaine and

sodium bicarbonate to bulk it up. They added a small amount of water, heated the mixture in the microwave for twenty to thirty seconds, and did not decant the resulting product. He testified that he sold the half-kilo to Person for $5,000 below the market price for crack (although Sergeant Kimble paid full market price) and stated that his customers had complained about the quality of his product, which he held out to be crack.

In rebuttal, the government introduced the testimony of FBI Agent Jeffrey Moore, who participated in a proffer interview with Betts in May 2007. Agent Moore testified that in that interview, Betts explained that he and Ramsey had learned of a buyer who was seeking half a kilogram of crack. They therefore purchased powder cocaine and cooked it to prepare the crack. During the interview, Betts admitted that the facts contained in the criminal complaint and supporting affidavit, which described the transaction and included numerous references to "crack," were true and accurate. Agent Moore testified that it is his practice to clarify whether an interview subject is speaking about crack or powder cocaine, and that he had understood Betts as referring to crack throughout the interview. In his notes, Agent Moore noted the word "crack" as well as street terms for crack, including "hard cocaine," "rock cocaine," and "cooked."

At the conclusion of the testimony, the district court ruled that the substance at issue was crack, and, therefore, the ten-year statutory minimum sentence applied. *See* 21 U.S.C. § 841(b)(1)(A)(iii). In

making its ruling the court specifically noted the testimony of Sergeant Kimble, stating, "there is nothing in that evidence that was submitted that would suggest that it is anything other than what the undercover agent testified that it was. He testified by sight, smell, and by feel that it appeared to be crack. That is sufficient." The court then applied the relevant sentencing guideline for crack, *see* U.S.S.G. § 2D1.1, and sentenced Betts to 140 months' imprisonment, the bottom of the applicable guidelines range. This appeal followed.

II. ANALYSIS

On appeal Betts challenges the district court's finding that the substance he sold was crack because, he argues, the government's evidence is insufficient to show that the substance was anything more than cocaine base. Additionally, Betts takes issue with two of the judge's statements, which, he contends, show that the judge not only relied on evidence outside the record but failed to understand the legal distinction between crack and cocaine base.

A. The drug-type finding was not clearly erroneous.

At sentencing the government has the burden to prove drug type by a preponderance of the evidence. *United States v. Stephenson*, 557 F.3d 449, 452 (7th Cir. 2009). We review the district court's factual finding that the substance was crack under the

deferential standard of clear error, and will reverse "only if we are left with the definite and firm conviction that a mistake was made." *United States v. Padilla*, 520 F.3d 766, 769 (7th Cir. 2008).

Crack is just one type of cocaine base, *see United States v. Booker*, 70 F.3d 488, 490-92 (7th Cir. 1995), and the enhanced statutory minimum sentence for the distribution of fifty grams or more of "cocaine base," 21 U.S.C. § 841(b)(1)(A)(iii), applies only to crack, *United States v. Edwards*, 397 F.3d 570, 571-72 (7th Cir. 2005). Similarly, the enhanced penalties contained in the sentencing guidelines use the term "cocaine base," but expressly apply only to crack. *See* U.S.S.G. § 2D1.1(c), Note D; *United States v. Bryant*, 557 F.3d 489, 498 (7th Cir. 2009). In light of the disparity between sentences for crack and other forms of cocaine base, it is critical that the government present evidence to show that the substance was crack and not merely cocaine base. *Padilla*, 520 F.3d at 771; *Edwards*, 397 F.3d at 571-72.

The difficulty, however, is that there is no precise chemical definition of crack, *Bryant*, 557 F.3d at 498, and in the guidelines, "crack" is described only as "the street name for a form of cocaine base, usually prepared by processing cocaine hydrochloride and sodium bicarbonate, and usually appearing in a lumpy, rocklike form." U.S.S.G. § 2D1.1(c), Note D. Consequently, in determining whether a substance is crack, courts have relied on a number of factors such as whether the substance has tested positive for the presence of cocaine base; the color, shape, and

texture; the method of packaging; the price; and whether the seller represents the substance as or understands the substance to be crack. *Bryant*, 557 F.3d at 499-500 (quotations and footnotes omitted).

Here, the district court primarily relied on the observations and opinion of Sergeant Kimble, a veteran police officer with years of experience in narcotics investigations, to determine that the substance was crack. That finding is supported by the chemical analysis showing that the substance in each bag contained cocaine base as well as either sodium bicarbonate, commonly used in the production of crack, *see* U.S.S.G. § 2D1.1(c), Note D; *Padilla*, 520 F.3d at 770; or procaine, which, as the forensic chemist's testimony supports, is a common additive found in crack, *see also United States v. Snow*, 462 F.3d 55, 60 n.1 (2d Cir. 2006). Additionally, Agent Moore's understanding that Betts was referring to crack based on his repeated use of street terms for crack, as well as Betts's own statements that his customers came to him for crack and that the facts in the complaint were true and correct, further support the court's finding.

Betts takes issue with the district court's reliance on Sergeant Kimble's conclusion that the substance was crack because on cross-examination the sergeant acknowledged that he did not know how the substance was produced. Additionally, Sergeant Kimble was never asked whether he is able to distinguish between crack and other forms of cocaine base. We have repeatedly held, however, that a district court

may rely on the testimony of people familiar with crack to determine that the substance was crack – "as those who buy and sell in the market generally understand the term." *Stephenson*, 557 F.3d at 453. Experts in this area may include veteran police officers, forensic chemists, drug users, and drug dealers. *Id.*; *United States v. Lake*, 500 F.3d 629, 634 (7th Cir. 2007); *United States v. Bradley*, 165 F.3d 594, 596 (7th Cir. 1999). The court was therefore allowed to rely on Sergeant Kimble's testimony that he believed, based on the look, smell, and feel of the substance, that it was crack.

Betts next argues that the unrefuted testimony of his expert witness shows that the method he used to produce the substance lacked the hallmarks of traditional crack production: the use of large amounts of water, dissolution, and a final decantation or filtration process. We have refused to adopt a rigid definition of crack or to recognize one specific method for producing crack because to do so "would invite those in the drug trade to make minor changes in structure, processing, or packaging to avoid the increased penalties for selling crack cocaine." *Stephenson*, 557 F.3d at 453; *see Bryant*, 557 F.3d at 499; *United States v. Abdul*, 122 F.3d 477, 479 (7th Cir. 1997). Moreover, the district court discounted the testimony of Betts's expert witness based on the fact that the expert relied on Betts's own description of how he made the substance and, the court concluded, Betts's account of that procedure was not consistent

with the chemical analysis, which showed that the substance had been converted to cocaine base.

B. Judge's comments did not amount to reversible error.

Betts next contends that two of the judge's comments at sentencing constitute reversible error. Betts argues that the court improperly relied on evidence outside the record to discount the testimony of Betts and his expert witness, citing the judge's statement that, "[i]n the many cases that I've had where experts have testified about crack cocaine, Mr. Betts' testimony . . . about how this was produced would be absolutely inconsistent with the process yielding cocaine base." The judge went on to explain that if Betts had used only a small amount of water and did not pour it out, the substance would simply be powder cocaine mixed with sodium bicarbonate, "and that's not the clinical analysis of the substance." Therefore, the judge concluded, "it didn't happen the way Mr. Betts testified."

A sentencing court has wide latitude in the types of evidence it may consider, *Padilla*, 520 F.3d at 769, so long as that evidence bears sufficient indicia of reliability, *see* U.S.S.G. § 6A1.3(a). Although the rules of evidence and the right to confront witnesses do not apply at sentencing, *see Williams v. New York*, 337 U.S. 241, 250-51 (1949); *United States v. Roche*, 415 F.3d 614, 618 (7th Cir. 2005), the court is generally prohibited from relying on undisclosed evidence as

this deprives the parties of the opportunity to rebut or respond to the evidence, *see Burns v. United States*, 501 U.S. 129, 135 (1991) (explaining that Federal Rule of Criminal Procedure 32 "contemplates full adversary testing of the issues relevant to a Guidelines sentence"); *United States v. Christman*, 509 F.3d 299, 304-05 (6th Cir. 2007). Indeed, it is unclear which experts the judge was referring to, or if, as the government suggests, the judge was referring to his knowledge of undisputed scientific facts about the process of creating cocaine base, detailed in our prior opinions, *see, e.g., United States v. Kelly*, 519 F.3d 355, 359 (7th Cir. 2008); *Edwards*, 397 F.3d at 574; *Booker*, 70 F.3d at 490-91 (taking judicial notice of the chemical properties of cocaine and cocaine base as well as the conversion process). Nevertheless, the court's statement does not constitute reversible error. The parties had a full opportunity to present evidence on this issue, and the court adequately explained its reasoning for the conclusion that Betts's description of how he produced the cocaine base was not credible. A district court's determination of credibility is entitled to great deference, *United States v. Longstreet*, 567 F.3d 911, 925 (7th Cir. 2009), and even if we disregard the court's reference to expert testimony from other cases, sufficient evidence supports the court's credibility determination, and it was not clearly erroneous.

Finally, Betts highlights the judge's comment that "[t]here is no dispute that on the other side of the process it yielded cocaine base, so I'm at a loss to

understand why we went through this exercise." Betts is correct that a conversion to cocaine base does not necessarily create crack, *see Stephenson*, 557 F.3d at 453 (noting that other methods of converting powder cocaine may result in non-crack cocaine base, including "freebase cocaine"); *Booker*, 70 F.3d at 491 (same); *Bradley*, 165 F.3d at 596 (distinguishing "coca paste" and "other exotic form[s] of cocaine base" from crack), and the evidence presented at sentencing was important given the significant sentencing disparity between crack and other forms of cocaine base, the latter of which are sentenced in the same manner as powder cocaine, *see Padilla*, 520 F.3d at 771. But a reading of the ruling as a whole shows that the judge understood crack to be just one form of cocaine base. As the judge commented, "[c]rack is merely a physical form of cocaine base that's smokable." Moreover, the court permissibly relied on Sergeant Kimble's opinion that the substance was crack. The court's determination that none of the other evidence submitted "would suggest that it is anything other than what the undercover agent testified that it was," reflects that the court considered the remaining evidence, and we cannot say that this finding was clearly erroneous. Although the government's evidence provided little to specifically distinguish the substance from other forms of cocaine base, it needed to show only "more likely than not" that the substance was crack, *United States v. Branch*, 195 F.3d 928, 934 (7th Cir. 1999). And here the totality of the evidence – including the chemical analysis showing cocaine base, the undercover officer's opinion that the substance was crack,

and Betts's own use of street terms for crack in the proffer interview as well as his statements that he purported to sell crack and that the criminal complaint alleging that he sold "crack" was correct – supports the court's finding.

III. CONCLUSION

Accordingly, we AFFIRM Betts's sentence.

UNITED STATES DISTRICT COURT

Northern District of Illinois, Eastern Division

UNITED STATES OF AMERICA

V.

DEXTER WAYNE BETTS

JUDGMENT IN A CRIMINAL CASE

Case Number: 06 CR 699-3

USM Number: 07643-027

Michael Leonard
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 12

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendants adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 841(a)	Distribution of a Controlled Substance	9/9/2006	12

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☑ Count(s) any and all remaining counts
☐ is ☑ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/30/2008
Date of Imposition of Judgment

/s/ David H. Coar
Signature of Judge

David H. Coar U.S. District Judge
Name f Judge Title of Judge

9/30/2008
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

140 Months on Count 12

☑ The court makes the following recommendations to the Bureau of Prisons:

A facility in Illinois or the Midwest to be close to his family

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

Five (5) years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall submit to one drug test within 15 days of release from imprisonment and random drug tests thereafter, conducted by the U.S. Probation Office, not to exceed 104 tests per year.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the

priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Order	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $ ___

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

  ☐ the interest requirement is waived for the ☐ fine ☐ restitution.

  ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $ ____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☑ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	No.06 CR 699-3
Plaintiff,	)	Chicago,I llinois
v.	)	September 30,200 8
DEXTER BETTS,	)	2:10 p.m.
Defendant.	)	Continued Sentencing

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DAVID H.C OAR

APPEARANCES:

For the Government:	HON.P ATRICK J. FITZGERALD United States Attorney,b y MR.P ATRICK C. POPE, Assistant United States Attorney 219 South Dearborn Street Suite 500 Chicago,I llinois 60604
For the Defendant:	MECKLER BULGER TILSON MARICK & PEARSON LLP 123 North Wacker Drive Suite 1800 Chicago,I llinois 60606 BY: MR.M ICHAEL I.L EONARD
U.S.P ROBATION:	MS.CR ISTINA FIGUEROA

TRACEY DANA McCULLOUGH,C SR,R PR
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* * *

A. Exactly. The crack referred to is cooked. It can be referred to as hard cocaine or rock cocaine. It's my understanding they all refer to the same thing.

MR.P OPE: No further questions,Y our Honor.

THE COURT: Anything further,M r.Leo nard?

MR.L EONARD: Nothing based upon that, Your Honor.

THE COURT: Thank you,s ir. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Anything else in rebuttal,M r. Pope?

MR.P OPE: Nothing, Your Honor.

THE COURT: All right.O n the question and on the objection by the defendanta s to whether or not the substance was crack cocaine or some other

form ofc ocaine base, the objection is overruled. We heard a lotabo ut the process by which the powder cocaine was submitted. There is no dispute thaton the other side of the process it yielded cocaine base, so I'm at a loss to understand why we went through this exercise.

Crack is merely a physical form ofc ocaine base that's smokable. There is no – there is nothing in thate vidence thatw as submitted thatw ould suggest thati t is anything other than what the undercover agent testified thati tw as. He testified by sight, by smell,and by feel thati tapp eared to be crack. Thati s sufficient. So the objection is overruled.

[98] All right. There were a number ofo ther objections.

MR.L EONARD: Yes. I think the only issues with respect to sentencing,J udge, with regard to the objections arc the issue with respect to acceptance ofr esponsibility.

THE COURT: Yes.

MR.L EONARD: And in addition, this Court's reliance upon any of those older convictions, the two that the governmentdi d notin clude in their report to the Court that the PSR picked up. Our position would be with respect to those offenses, Your Honor,e ven ify ou were – obviously you've already ruled with respect to the 10-year mandatory minimum, but our belief would be that Mr.B etts should notge tan y time over that and that this

Courts hould notc onsider those offenses because of their – how long ago they were and what age the defendantw as, etc etera, Your Honor,a s spelled outin our papers. And, therefore,o verstates the seriousness of the offense.

THE COURT: Well, there was also an issue aboutr olc in the offense thaty ou talked about.

MR.L EONARD: Correct, Your Honor. Our position is that this was essentially a conspiracy involving the gentlemen Mr.P erson and Mr.R amsey who operatcd a drug opcration on that particular block,and that their conductw as materially and significantly different than Mr.B etts' conductin that they had an ongoing drug operation at thatlo cation and conducted

* * *